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RIGHT OF A PUBLIC SERVICE COMMISSION TO FIX COMMUTATION RATES AT LESS THAN ORDINARY MAXIMUM RATES.

An opinion handed down by U. S. Supreme Court at the present October, 1917, Term, after the citation of many cases, concludes as follows: "The reasoning of these decisions is sound and involves no violation of the Federal constitution. True it is that it may not be possible to reconcile these views with all that is said in the opinion delivered by the majority of the court in the case of Lake Shore & Michigan Southern Ry. Co. v. Smith, 173 U. S. 684. The views therein expressed, which are inconsistent with the right of the states to fix reasonable commutation rates, when the carrier has itself established rates for such service, must be regarded as overruled by the decision in this case." Pennsylvania R. R. Co. v. Public Service Commission, 38 Sup. Ct. 2, dissented from by the Chief Justice and Justices McKenna and McReynolds.

The Smith case above referred to was relied on by the railroad company as putting it beyond the power of a State Public Service Commission to require the company to establish commutation rates for intrastate passengers.

It was said by Justice Day, speaking for the majority, that: "The question, as counsel for plaintiff in error states it, is whether a state legislature, either directly or through the medium of a public service commission, under the guise of regulating commerce, may compel carriers engaged in both interstate and intrastate commerce to establish and maintain intrastate rates at less than both the interstate and intrastate standard and legally established maxima."

The Smith case concerned a statute for the issuing of mileage books for 1,000 miles at a less rate than that charged for single trip tickets. It was held to be an arbitrary exercise of power and unconstitutional interference with the business of the carrier, by statute, its effect being to violate the due process of law clause of the constitution.

It was said the Smith or Lake Shore case "did not involve, as does the present one, the power of the state commission to fix intrastate rates for commutation tickets where such rates had already been put in force by the railroad company of its own volition, and we confine ourselves to the precise question presented in this case, which involves the supervision of commutation rates when rates of that character have been voluntarily established by the carrier. The rates here involved are wholly intrastate."

The court, then, cites Interstate Com. Com. v. B. & O. R. Co., 145 U. S. 263 to the effect that a "party rate ticket" for ten or more persons, which was less for each person than the ordinary rate, was not an unlawful discrimination by a carrier and it was said in the course of the opinion that tickets at reduced rates for a limited period could be issued.

Then Norfolk & W. Ry. v. West Virginia, 236 U. S. 605, is excerpted from to show that service to a commuter as one "carrying little baggage and riding many times on a single ticket for short distances" may be regarded as special service justifying difference from a single way passenger. There is also spoken of the encouragement given by railroads to the building up of "suburban communities."

It is said: "On the strength of these commutation tariffs, it is a fact that thousands of persons have acquired homes in city suburbs and nearby towns in reliance upon this action of the carriers in fixing special rates and furnishing particular accommodations suitable to the traffic. This fact has been recognized by the courts of the country, by the Interstate Commerce

Commission and quite generally by the railroad commissions of the states."

An opinion by Commissioner Harlan of Interstate Commerce Commission, 21 I. C. C. 428, is cited to the effect that the Smith case did not cover commutation rates but only that of mileage tickets. See also People ex rel. v. Public Service Commission, 159 N. Y., A. D. 531, affirmed in 215 N. Y. 689.

It is extending a principle quite far to say that what a railroad may voluntarily grant, in the way of a practice, where generally permitted to fix its own maximum rates, it becomes bound by, when maximum rates are fixed by statute directly or through the medium of a commission. And it is hard to say, that if it is an arbitrary exercise of power and an interference with constitutional rights, when it requires mileage tickets at a lower rate than the ordinary maximum, yet it is not this where a commutation rate is prescribed.

In the latter case the fact of encouragement of suburban residents in building up homes is a management in their own way by carriers of their own affairs. That merchants may have sent out traveling men because of encouragement thereby in 1,000 mileage tickets is held to be within the free rights of carriers without any theory of estoppel attaching thereto. Whether the Supreme Court considers that the Smith case is squarely overruled it is a little difficult to say. It must be thought, however, to be limited so very closely, that little of substance in it as a rule of law is left surviving. And also it may be thought, that, if commutation rates, as say between St. Louis and East St. Louis, the two places lying in different states, most likely they would be held within the power of Interstate Commerce Commission to establish. Also it may be surmised that the Shreveport case, which held that where a local rate from a jobber's city interfered with interstate rates, it is subject to annulment by Interstate Commerce Commission, would not cover commuters' rates whether intrastate or interstate.

Thus it is seen that the problem of discrimination in rates, where any reasonable theory may be advanced as to special service, is far from being thoroughly settled. What may be or not regarded as "special service" is an open question.

Special service is held in this case to be shown by the fact that commutation tickets include many trips, that passengers have little if any baggage, that the business has been encouraged by railroads etc., etc. In other words, these facts constitute a reasonable basis for classification. This liberality by the Supreme Court is in keeping with the purpose of the Supreme Court to apply practically the due process clause of our Constitution. If business men in exercise of their judgment would ordinarily resort to this there is a presumption of no real loss. And discrimination in an unlawful way is avoided.

NOTES OF IMPORTANT DECISIONS.

INSURANCE—PREMIUMS PAID BY INSOLVENT RECOVERABLE BY CREDITORS.—In Navassa Guano Co. v. Cockfield, 244 Fed. 222, decided by District Court of Eastern District of South Carolina, the interesting question is discussed, whether premiums paid by an insolvent may be recovered by creditors out of the proceeds of a policy, or whether, if his debts are sufficiently great, the whole proceeds of the policy go to his creditors.

The Court said: "The true rule would seem to be, that a man should not be allowed to divert assets which belong properly to his creditors for the acquisition of property for or to make gifts to others. * * * If an express trustee unlawfully makes speculative investments with the trust funds in his hands, then the whole investment can be traced to the beneficiary of the fund; for a man is not permitted to misuse his position to take the chances of gain to himself if he is successful and of loss to his *cestuis que trustent* if he fails." So far this seems to be reasoning that

the policy is for the benefit of creditors whose money has been diverted to what is a speculative purpose—for if there is anything speculative in its nature, it is a life insurance policy.

But the Court goes on to say: "An insolvent man is not in that class of (express) trustees. Whilst a man who is insolvent may be said in one sense to hold his funds in trust for his creditors, he is not an active trustee in the sense that everything he does is for their benefit or that he carries on business for them and with their funds. The direct trusteeship only becomes established when proceedings are taken to divest him of his property and apply it to his debts."

This distinction appears well stated, especially because what of property that may come into an insolvent's hands comes to him in an individual, rather than in a trustee, capacity. It is rather as he comes to dispose of it that the trust relation comes into play.

But it is further said: "Additional to this consideration is that of the peculiar character of the property embodied in a life insurance policy as to which the donation to be of value must be followed by the death of the donor and the unlikelihood of any man intending a fraud, which can only be made effective by his death. The true rule would seem to be that in the case of a life insurance policy transferred under the circumstances of the present case, the only diversion of funds of which creditors have a right to complain and which should be returned to them, is the premiums paid with interest."

This does not add greatly to the reason first above given. The argument in its support depends more on personal predisposition than upon clear logic. Rather stronger support might be adduced in the fact, that one is seeking to provide for wife or family after death by using funds he could lawfully expend for them during life. In this case the policy was in favor of a brother as beneficiary and in such a case this reasoning would not apply.

BILLS AND NOTES—PROVISION FOR EXTENSION AFFECTING NEGOTIABILITY.—In Cedar Rapids Nat. Bank v. Weber, 164 N. W. 233, decided by Supreme Court of Iowa it was held that a note providing that "all parties to this note, including sureties, indorsers and guarantors, hereby severally * * * consent to extensions of time on this note" made the same non-negotiable.

The Court refers to a great abundance of cases in which provisions for extension are ruled upon and says: "The conflict in the holdings * * * is more apparent than real. In most of them in which the note was held negotiable, it was quite apparent that the language used was not sufficient to make out a binding obligation upon the payee or holder to grant an extension. * * * Where the provision of the instrument bound the payee to grant an extension, the note was held non-negotiable, but where the language used clearly did not impose any obligation upon payee to grant an extension of time of payment, the notes were held negotiable."

It seems to us the last clause ought to read that where the language used does not clearly impose, etc. In other words, if there is obligation imposed it ought to be clearly stated; otherwise it is not imposed.

We see nothing in the language of the instrument considered that looks to a binding obligation on payee or holder. It simply provides that, if there is to be granted any extension by payee or holder, this is to be esteemed a favor to all liable upon the note. It is not said or implied that either holder or payee may not refuse to grant any favor that may be asked in the way of an extension. The fact that extension is for an indefinite time is additional reason for saying payee or holder is not bound to give any extension when none is specifically provided for.

CARRIERS OF PASSENGERS—PASSENGER PUT OFF AT WRONG STATION RESORTING TO OTHER MEANS OF CONVEYANCE.—Gulf C. & S. F. Ry. Co. v. Gentry, 197 S. W. 482, decided by Texas Court of Civil Appeals, deals with the question of proximate cause.

The case shows that a passenger bound for Justin was caused to alight at night, at a station nine miles from Justin. She was expected at Justin on or before 9 o'clock a. m. the following day. Accommodations could have been obtained at the station at which she was put off. The reason for her being at Justin by 9 the next day was to take part in a rehearsal for a performance on the evening of that day. A train upon which she might have proceeded the next day passed Justin at 9:15 a. m. but it did not ordinarily stop at Justin. Because of the weather the road between the stations was impassable for any kind of vehicle. She left for Justin at 11 p. m. on horseback, was five hours on the way and suffered from a miscarriage. By reason of her condition she knew she ought not to subject herself to any unusual strain or exertion. She made no request to the station agent to have the 9:15 a. m.

train stop at Justin. Under these circumstances it was held to be a question for the jury whether she acted with ordinary prudence in pursuing her journey starting at 11 p. m. on horseback for Justin.

The Court said: "The present case is an extreme one, going further than any we have been referred to, but we have concluded, that the application of the rule announced above requires us to hold, that in this case the question as to whether the negligence alleged was the proximate cause of the injury and as to whether Mrs. Gentry was guilty of contributory negligence, was for the jury to decide."

Referring to one of the cases decided by Texas Supreme Court it was said: "About the only difference between that case and this one is that it was not shown in that case that plaintiff was under any particular necessity of reaching her destination before the next day." That case showed the passenger was held "guilty of contributory negligence in walking to her destination on a cold night when she could have secured accommodations at the place where she was put off."

It seems to us, that the burden was upon plaintiff in this case to show fifteen minutes after the hour set for a rehearsal would have made a material difference in her arrival at her destination and unless she offered proof that she applied to the station agent to have the train stop at Justin and he refused to comply with her request, her case failed for want of proof to show the necessity of a horseback ride over a road impassible by a vehicle, especially by one knowing she should take no unusual risk. If an issue such as was here presented was not altogether outside of what would be a question in which reasonable minds might disagree, it is difficult to imagine one that would be. Where telegraph lines were open, and yet where one in delicate condition stands by for two hours and takes no steps to avoid the risk she took, this seems the grossest kind of contributory negligence.

This case is an extreme application of the principle in Baxendale v. Hadley applied to the assumption that a carrier is bound to know that "it is carrying passengers in all conditions and who are travelling on various missions of more or less urgency, and that it is natural for a traveler put off at the wrong place to attempt to reach his destination even at some risk of exposure." Rather is it to be thought that travelers will not take extraordinary risk of exposure, unless they show imperative necessity therefor. This shifts the burden.

COMMENTS UPON DEVELOPMENTS OF THE LAST FIVE YEARS IN THE LAW OF CARRIERS OF GOODS IN INTERSTATE COMMERCE—PART II—THE CARMACK AMENDMENT AS AMENDED BY THE CUMMINS ACTS.*

The Cummins Acts.—The Carmack Amendment was amended March 4. 1915, by the first Cummins Act[32] and on August 9, 1916, by the second Cummins Act.[33] The first Cummins Act was enacted as a result of the decisions of the Supreme Court in the Croninger and like cases, being principally designed to prevent limitations of liability in certain circumstances and the second Cummins Act was enacted to narrow in certain respects the broader scope which had been given to the Carmack Amendment by the first Cummins Act. Neither of the Cummins Acts has as yet come before the Supreme Court.

The Carmack Amendment, as amended by the two Cummins Acts, is as follows:[34]

"Any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading and no contract, receipt, rule, regulation, or other limitation of any character

*Part I of this article appeared in the preceding number of the Central Law Journal.

(32) 38 Stats. at Large, 1196.

(33) 39 Stats. at Large, 441.

(34) 8 U. S. Comp. Stats. Anno., Sections 8604a and 8604aa, pp. 9289 and 9311; 24 Stat. 386, 34 Stat. 595; 38 Stat. 1196, 39 Stat. 441.

whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory, to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: Provided, however, That the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses: Provided further, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: Provided further, That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: Provided, however, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

The amendments to the Carmack Amendment deal primarily with the amount of liability as distinguished from the question of the circumstances under which liability exists. Before, however, considering questions of the amount of liability where the carrier is liable, let us consider whether the general common law of the federal courts is modified (aside from the

question of liability of the initial carrier for loss or damage occurring on the lines of its connecting carriers) by the Carmack Amendment as amended.

The statute imposes liability on the carrier "for any loss, damage, or injury caused by it" or by the connecting carrier and provides that "no contract, receipt, rule regulation, *or other limitation of any character whatsoever*" shall exempt the carrier from "the liability hereby imposed." The words in italic were added by the first Cummins Act, as was also the following language:

"and any such common carrier * * * shall be liable * * * for the full actual loss, damage, or injury to such property caused by it or by any such common carrier * * * to which such property may be delivered or over whose line or lines such property may pass * * * notwithstanding any limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void."

In Missouri, K. & T. Ry. Co. v. Harriman, supra, the Supreme Court defined the liability imposed by the original Carmack Amendment as follows:

"The liability imposed by the statute is the liability imposed by the common law upon a common carrier, and may be limited or qualified by special contract with the shipper, provided the limitation or qualification be just and reasonable, and does not exempt from loss or responsibility due to negligence."

The original Carmack Amendment, then, did not affect the common law exceptions to the liability of the carrier as insurer, such as those obtaining in case of loss or damage due to act of God, the public enemy, etc., nor did it prevent the carrier from contracting against liability for loss or damage not caused by its negligence. We do not believe that this situation has been changed by the Cummins Act.

Coming to the question of the amount of liability, where the carrier is liable, it is plain, of course, that no attempt to limit liability to a specific sum is valid save in the case of baggage and in the cases where, except where ordinary live stock is involved, the Commission shall authorize interdependent rates and declared or agreed valutions.[35] There is, however, a serious controversy as to whether the Cummins Amendments invalidate an agreement, such as is contained in the present bills of lading, to the effect that in case of loss or damage the basis of liability shall be the value of the shipment at place and time of shipment. On the one hand it is argued that, as the Act makes the carriers liable for "full, actual loss, damage, or injury" to the property and invalidates "any limitation of liability or limitation of the amount of recovery or representation or agreement as to value," the agreement in

(35) In a proceeding styled "In the Matter of Express Rates, Practices, Accounts, and Revenues—Released Rates" (decided April 2, 1917), 43 I. C. C., 510, the Commission authorized the express companies to file tariffs providing for express rates dependent upon the value of the property as declared in writing by the shipper or agreed upon in writing, except as to ordinary live stock. The Commission disapproved the practice of maintaining rates for the transportation of ordinary live stock based on actual value and further declared that rates based on actual value cannot be lawfully maintained upon any other character of traffic except under the authorization of the Commission. In making this declaration, the Commission could not, of course, have intended to refer to baggage which is excepted from the prohibition against limitations of amount of recovery, no authorization by the Commission being necessary. There are many tariffs on file with the Commission applicable to various classes of property (e. g., household goods, marble, etc.), including ordinary live stock, under which the rate varies with the actual value of the property, which tariffs have not been authorized by the Commission. The theory of the carrier filing these tariffs is that while they cannot have the effect of limiting the amount of recovery to the value declared by the shipper to be the actual value yet a shipper will be deterred by the criminal provisions of Section 10 of the Act from stating a false value. It will be noted that in the Express case above referred to the Commission expresses disapproval of such tariffs.

question would be invalid as an attempt by contractural limitation to modify the measure of damages obtaining at common law (based on destination value), and to restrict the recovery for loss, damage or injury to such property in direct conflict with the provisions of the Act. On the other hand, it is contended that the stipulation in question was upheld (even in case of the carrier's negligence) at common law; that the provision of the unamended Carmack Amendment making the carrier liable for "any loss, damage or injury to the property" was not construed to invalidate such provision; that the history of the Act indicates that it was not the purpose of Congress to invalidate the provision in view of its desirability as promoting uniformity, in minimizing discrimination, and in expediting the settlement of freight claims; that it is not lightly to be inferred that it was the intention to invalidate it; and finally that it does not exempt the carrier from its liability in whole or in part but simply takes the value at point of origin as the full actual value.[36]

This question, among others, is before the Interstate Commerce Commission in a proceeding[37] in which the Commission is formulating a uniform bill of lading to be prescribed for rail and water carriers subject to the Act to Regulate Commerce, the case having been submitted by carriers and shippers on oral and written argument several months ago.

Attention is called to the last two provisions of the Carmack Amendment as amended.

The last proviso is obscure and ungrammatical.

These provisos do not invalidate clauses requiring notice of claim to be given within a period of not less than 90 days and claim to be filed within a period of not less than four months except in case of loss, damage or injury, "due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence."

It is plain that loss or damage in transit which is not attributable to the carrier's negligence is not affected. The provision is in some respects difficult to construe. Suppose, for example, wheat is lost from a car in transit by leakage due to the carrier's negligence: In such case, can it be said that the property is "damaged in transit by carelessness or negligence" (assuming that a construction of the Act requires the insertion of the words "the property was" before the words last above quoted)?

The Pomerene Act.—On August 29, 1916, Congress enacted an act entitled "An Act relating to bills of lading in interstate and foreign commerce," effective January 1. 1917, known as the Pomerene Act.[38]

The bill out of which this act grew is the so-called Uniform Bills of Lading Bill adopted by the Commissioners on Uniform State Laws and endorsed by the American Bar Association which has been introduced into the legislature of all the states and enacted by a number of them. Congress amended the bill in some important particulars. The Act is in the main an attempt to codify the common law relating to the subject matter, but it makes some substantial changes therein.

One of the most important changes made in the common law by this Act is found in section 22 which provides:

"That if a bill of lading has been issued by a carrier or on his behalf by an agent or employe the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several states and with foreign nations, the carrier shall be liable to (a) the owner of

(36) See In re The Cummins Amendment, 33 I. C. C., 682 and 693.

(37) I. C. C. Docket No. 4844.

(38) 39 Stat. 538, 8 U. S. Comp. Stats. Anno., p. 9311, Secs. 8604aaa et seq.

goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the non-receipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue."

This provision reverses the rule of the federal common law under which the carrier was held liable only for the goods received regardless of contrary recitals in the bill of lading issued by its agent.

The provisions of sections 20 and 21 require the carrier in certain cases to ascertain what is delivered to it and in such cases prohibit the carrier from inserting in its bill of lading "shippers' weight, load, and count," or other words of like import and nullifies such words if so inserted.

The Act makes "order" bills of lading negotiable paper.

Section 3 defines order bills as follows:

"That a bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill."

Prior to the time when the Act went into effect, property covered by a bill of lading under which the goods were consigned to the order of the consignee could be delivered to such consignee or upon his order without requiring production and surrender of the bill of lading, the situation being the same as if the goods had been consigned simply to John Doe, consignee.

Such a bill is now negotiable and the carrier must make delivery only upon surrender of the bill, properly endorsed.[39]

Prior to the passage of the Act it was generally held that when the carrier delivered goods (although) covered by an order bill to the party entitled to delivery, the bill thereby became functus officio and the transfer or attempted negotiation thereof after delivery of the goods conferred no rights upon the transferee. This is changed by section 12 of the Act.

The Act contains a number of other provisions changing or adding to the common law, such as the provisions[40] authorizing the court to order the delivery of goods covered by a lost, stolen or destroyed bill, upon requiring adequate security to be given the carrier and the provision[41] for interpleader at the instance of the carrier.

The Hepburn Act, under the broad construction placed upon its provisions by the decisions of the Supreme Court, has proved a blessing to shippers and carriers alike. So far as interstate and foreign commerce is concerned, it has substituted one uniform body of law for the diverse rules of law, statutory, judicial and otherwise, of the forty-eight states. Questions of the conflict of laws, frequently difficult and perplexing, have been eliminated. Discriminations between shippers, which inevitably arose in many forms from the diversity of state law, have been removed. There is a single tribunal for the final settlement of doubts and disputes, and litigation involving the respective rights, obligations, and liabilities of shippers and carriers of goods in interstate commerce is rapidly diminishing.

The beneficient results of the substitution of one for forty-nine masters in respect to this branch of the activities of interstate carriers and the application thereto of a single code of law should point the way to other much needed reforms in our method of dealing with these great instrumentalities of commerce.[42]

JOHN K. GRAVES.

(39) Sec. 8.

(40) Sec. 14.

(41) Sec. 17.

(42) See Gulf, etc., Ry Co. v. Texas Packing Co., decided by U. S. Sup. Ct., May 7, 1917.

CARRIERS—MENTAL SUFFERING.

LIPMAN v. ATLANTIC COAST LINE R. CO.

(Supreme Court of South Carolina. Sept. 26, 1917.)

93 S. E. 714.

A carrier was liable for mental suffering, inflicted upon a passenger by the conductor, who wrongfully used insulting language to the passenger, even in the absence of physical injury.

Fraser, J., dissenting.

HYDRICK, J. This is an action for damages for mental anguish caused by insulting language addressed to plaintiff by the conductor of the train on which plaintiff was a passenger. No other injury is alleged. Defendant demurred for insufficiency.

The fourth ground of demurrer is based upon the broad proposition that a carrier is not liable for mental suffering inflicted upon his passengers by his servants, in the absence of physical injury. Otherwise stated, the contention amounts to this: Unless some physical injury is done, a carrier or his servants may insult, abuse, or apply to a passenger offensive and opprobrious epithets, and hold him up to the ridicule and contempt of his fellow passengers; and may use, or permit others to use, profane or obscene language in the presence of cultivated and refined women, and subject them to wanton approaches, with impunity. This partial statement of the consequences of such a rule is enough to show that its application to the relation of carrier and passenger would be intolerable and a reproach to the law of any civilized state.

Defendant cites decisions of this court in which the rule relied upon was so unqualifiedly stated, but overlooks the principle, universally recognized and applied in the interpretation of judicial decisions, that the statement of a rule by the court must be understood as applicable to the facts of the case under consideration, and fails to note the difference between the relation of the parties or the facts of those cases and this case. Examination of the cases cited will show that the principle was applied in some other relation than that of carrier and passenger, or in some other phase of that relation, and also that they were based on allegations or proof of negligence only. There are many actions in which the rule stated does not apply. In libel, slander, malicious prosecution, breach of promise of marriage, and others that might be mentioned, damages for mental suffering are recoverable, although no physical injury is inflicted. There are many decisions of this court in which it has been held, expressly in some and impliedly in others, that damages may be recovered for mental suffering alone, when that injury was inflicted recklessly, willfully, wantonly, or maliciously. Even before the mental anguish statute in telegraph cases, this court held that damages are recoverable for mental anguish alone, caused by reckless, willful, or malicious acts or omissions in the handling of telegrams. Lewis v. Tel. Co., 57 S. C. 325, 35 S. E. 556; Butler v. Tel. Co., 62 S. C. 222, 40 S. E. 162, 89 Am. St. Rep 893

For reasons that need not be stated here, the relation between carrier and passenger involves special and peculiar obligations and duties, differing in kind and degree from those of almost every other legal or contractual relation. On account of the peculiar situation of the parties, the law implies a promise and imposes upos the carrier the corresponding duty of protection and courteous treatment. Therefore the carrier is under the absolute duty of protecting his passengers from assault or insult by himself or his servants.

The result of the ruling cases on the subject is thus stated in 4 R. C. L. 1174, 1175:

"Passengers do not contract merely for transportation, but have the right to be treated by the servants and agents of the carrier with kindness, respect, courtesy, and due consideration, and to be protected against insult, indignity, and abuse from such servants and agents, and it is generally held that the use by an employe of abusive or insulting language, or rude and discourteous conduct on the part of such employe, toward a passenger, gives to the passenger a right of action against the carrier for damages. The rule applies with special strictness in the case of abusive or insulting language used by an employe of the carrier toward a woman passenger. In the case of a woman, her contract of passage embraces an implied stipulation that the corporation will protect her against general obscenity, immodest conduct, or wanton approach. The circumstances that the insult complained of was the result of mistake on the part of the employe will not defeat a recovery; and while the circumstances surrounding the occurrence may be shown, and if the abuse or insult was brought about by the misconduct of the passenger the jury may consider that in mitigation of damages, nevertheless the passenger is entitled to recover at least nominal damages. While it is usually held that it is immaterial that mental anguish constitutes the only damage suffered by the passenger, since to prescribe the duty of protection from insults and indignities, and yet to hold the carrier immune from liability for the only consequence that can ordinarily

result therefore, viz. mental suffering, would be simply a contradiction in terms, yet the right of a passenger to recover against the carrier for the rude and insulting language of the carrier's servant has been denied in some jurisdictions in cases where mental suffering constituted the only injury suffered by the passenger. An imperative manner and form of speech on the part of the carrier's employe in addressing a passenger is not actionable under the rule as to insulting language. And, in order to sustain the action, the wrong must be found in a servant's language and manner, and not in the plaintiff's opinion of their propriety, or in the epithets and adjectives by which the plaintiff characterizes them." See, also, 10 C. J. 895, 896.

Examination of the many cases cited in the notes of the valuable works above referred to will show that the overwhelming weight of reason and authority supports the conclusion which this court has reached, and, though some authority is cited to the contrary, it is based upon unsatisfactory reasoning.

The following cases show that the majority rule obtains in the federal courts. In Nieto v. Clark, 1 Cliff. 145, Fed. Cas. No. 10,262, Mr. Justice Clifford, then an Associate Justice of the Supreme Court, said:

"Passengers are under obligation to conform to the reasonable regulations of the vessel, and to a certain extent owe obedience to the commands of the master, as the necessary consequence of the relation they bear to the ship during the voyage; and they are also entitled to respectful treatment from the master and other officers in charge of the vessel, and may well claim to be exempt from insult and personal violence from the crew. They do not contract merely for shiproom and the right to personal existence, but for suitable food, comforts, and necessaries, and for protection against personal rudeness from all those in charge of the vessel, and every wanton interference with their persons."

See, also, Pendleton v. Kinsley, 3 Cliff. 416, Fed. Cas. No. 10,922; New York, etc., Ry. Co. v. Bennett, 50 Fed. 496, 1 C. C. A. 544; Steamboat Co. v. Brockett, 121 U. S. 637, 7 Sup. Ct. 1039, 30 L. Ed. 1049.

Moreover, the question cannot be regarded as an open one in this state. While it is true that, in the cases below cited, there were other elements of injury, nevertheless it was held that damages for mental suffering alone are recoverable of a carrier for an unprovoked insult to a passenger by the carrier's agent

In Cave v. Ry., 94 S. C. 282, 287, 77 S. E. 1017, 1020 (L. R. A. 1915B, 915. Ann. Cas. 1915A, 1065), it was said:

"The courts have not defined, and it would be unwise to attempt to define accurately, the kind of language which must be used by a conductor to a passenger before liability will be imposed upon the carrier. Ordinarily too much depends upon the circumstances, the relation of the parties, the tone and manner in which a thing is said, for any exact definition or rule to be laid down. But there can be no doubt that where a conductor uses language to a passenger which is calculated to insult, humiliate, or wound the feelings of a person of ordinary feelings and sensibilities, and it is intended to have that effect, the carrier is liable, for the contract of carriage impliedly stipulates for decent, courteous and respectful treatment at the hands of the carrier's servants."

While there was difference of opinion as to whether the language there used was insulting, there was none on the question of liability for the use of insulting language. In Adams v. Ry., 103 S. C. 327, 87 S. E. 1007, L. R. A. 1916D, 1183, every element of damage, except the alleged insulting language used, was eliminated by the decision of this court, and the case was remanded for a new trial on that issue alone, which necessarily involved the holding that plaintiff might recover for mental suffering alone caused by insulting language.

Judgment reversed.

GARY, C. J., and WATTS and GAGE, JJ., concur.

FRASER, J. (dissenting). I cannot concur in the opinion of the majority. As I see it, this court has clearly held the contrary. In Norris v. Railway, 84 S. C. p. 21, 65 S. E. p. 959, this court says:

"The law of this state does not allow recovery of damages for mental suffering in the absence of bodily injury, except under the mental anguish statutes with reference to telegraph companies."

It is true in the Norris Case the offensive language was used by passengers, but the principle is the same.

NOTE.—*Insulting Language by Carrier's Servant as Sole Predicate for Damages.*—Cases in courts which recognize mental anguish as a recoverable element of damages, though unaccompanied by physical injury are not cited here.

In St. Louis, I. M. & S. R. Co. v. Taylor, Ark., 104 S. W. 551, 13 L. R. A. (N. S.) 159, the court reviewed former rulings by the court to the effect, that there can be no recovery for mental anguish, where a corporation's agent commits a wrong, in the absence of willfulness nor against an individual where there is willfulness. Then considering the duty a carrier owes a passenger it cited St. Louis, I. M. & S. R. Co. v. Dowgiallo, 82 Ark. 289, 101 S. W. 412, and said: "The carrier can be required to respond only in such damages as the law takes heed of as proper elements of damages. If mental suffering and humiliation, unaccompanied by any physical injury, are not

accounted in law as elements of damages in other cases, we see no reason why they should be made so in testing the liability of a carrier for the wrongful acts of its servants. * * * The reason that mental suffering unaccompanied by physical injury is not considered as an element of damages is that it is deemed too remote, uncertain and difficult of ascertainment; and the reason that such suffering is allowed as an element of damages, when accompanied by physical injury, is that the two are so intimately connected that both must be considered because of the difficulty of separating them."

This statement is submitted as quite clear, and leaves little or no room for distinguishing carrier cases, or even corporation cases, from other cases in courts rejecting mental suffering alone as a predicate for damages. But cases in courts which generally do not recognize mental anguish alone as an element of damages, do show that, as a carrier owes to passengers protection from insult, violation of duty in this regard gives claim for damages.

Thus see Gillespie v. Brooklyn Heights R. R. Co., 178 N. Y. 347, 70 N. E. 857, 66 L. R. A. 618, 102 Am. St. Rep. 503. This case says violation of this duty is in "the nature of a tort and recovery may be had in an action of tort as well as for a breach of contract." It cites Booth on Street Railways, § 372, which says: "No matter what the motive is which incites the servant of the carrier to commit an improper act towards the passenger during the existence of the relation, the master is liable for the act and its natural and legitimate consequences. Hence it is responsible for insulting conduct of its servants, which stops short of actual violence."

Omitting what is said about "natural and legitimate consequences," as for example illness superinduced by insult, there is not here suggested any answer to what the Arkansas court says about remoteness, uncertainty and difficulty of ascertainment. And the same observation may be made as to Thompson on Negligence, § 3186; Hutchinson on Carriers, § 595, 596.

Judge Story, in Chamberlain v. Chandler, 3 Mason, 242, 245, Fed. Cas. 2575, spoke of the duty of carriers to passengers with respect to proper treatment, and for violation thereof damages are compensatory "for mental sufferings occasioned by acts of wanton injustice, equally whether they operate by way of direct or of consequential damages." But does this answer the claim of rejection because of uncertainty or difficulty in their ascertainment?

In Cole v. Atlanta, etc., R. R. Co., 102 Ga. 474, 31 S. E. 107, it was said: "The unprovoked use by a conductor to a passenger of opprobious words and abusive language tending to humiliate the passenger or subject him to mortification, gives to the latter a right of action against the company." But how may he show his damages, if, as a general rule, they are incapable of estimation?

This difficulty presented itself, apparently, to the court in Southern Kansas R. Co. v. Hinsdale, 38 Kan. 507, 16 Pac. 937, ejection of a passenger by a conductor using insulting or abusive language. It was held the passenger could not also "receive damages because the words used tended to bring him into ignominy and disgrace."

In Shepard v. Chicago, etc., R. R. Co., 77 Iowa 54, 41 N. W. 564, it was said indignity and outrage, whether connected with physical suffering or not, are allowable as compensatory damages against a carrier. But the reasoning by the court implies that it recognizes generally that these are elements of damages. There was dissent in the Gillespie case, a brief opinion being by Gray, J., concurred in by Parker, C. J., and O'Brien, J. This dissent says: "I dissent, because I think it is extending unduly the doctrine of a common carrier's liability in making it answerable in damages for the slanderous words spoken by one of its agents." This dissent does not touch the question of non-liability because of remoteness, uncertainty and difficulty of ascertainment. It does, however, say that the duty of a carrier does not carry over the rule applicable to other corporate agents.

In Knoxville Traction Co. v. Lane, 103 Tenn. 376, 53 S. W. 557, 46 L. R. A. 549, the court distinguished as follows: "The defendant insists, further, that this suit is based solely upon injury to the feelings of the plaintiff and that it was held by this court in the case of Wadsworth v. Western U. Tel. Co., 86 Tenn. 695, 8 S. W. 574, that such an action cannot be sustained." The defendant is mistaken in its assumption that this case rests alone upon injury to the feelings of the plaintiff, for the gravamen of this action is the defendant's breach of its contract of carriage, which includes, as heretofore stated, the duty to protect the passenger from insult either by its employes or third persons."

It may be said that the fact that damages are uncertain where there is violation of contractual rights does not make them irrecoverable. Pain even in physical suffering may be as hard to estimate as is pain in mental suffering, but the former undoubtedly may be recovered for. It may be thought, therefore, that the instant case allowing recovery as compensatory damages rests upon a proper basis. At all events it has the great weight of authority in its favor. C.

RECENT DECISIONS BY THE NEW YORK COUNTY LAWYERS ASSOCIATION COMMITTEE ON PROFESSIONAL ETHICS.

QUESTION No. 131.

Collections; Relation to Third Persons; Relation to Client—Permitting client to forward through bank for collection draft containing upon its face instructions to deliver it to designated attorney at law, if not paid.—**There are a number of mercantile agencies which publish directories of banks and attorneys and charge attorneys for representation therein. These agencies sell their directories to mercantile houses together with a quantity of collection forms which include drafts in substantially the following form:**

Roe Mercantile Agency.

Bank and Legal Correspondents Everywhere in

the World.

For Protection of Trade, Collection of Debts, Reporting Delinquent Debtors.

$..... ....., 191

At sight, pay to.....Bank of.....

..... Dollars,

with exchange and cost of collection, and charge to the account of

To..... .....

....

Instructions to Bank:

If this Draft is paid, remit direct to Drawer.

If this Draft is not paid, please mail it in enclosed stamped envelope to

John Doe, Attorney at Law, Smiths, N. Y.

Do not protest.

This draft is filled out by the mercantile house by inserting the name of a bank as payee, and the name of an attorney in the drawee's town to whom the draft is to be turned over by the bank in the event of non-payment, both names being taken from the directory. If the draft is paid, the bank remits direct to the drawer, in which event the attorney receives nothing for the use of his name. If the draft is not paid, it is turned over to the attorney by the bank and then becomes a claim for collection, to be handled in the usual way. Is it proper for an attorney to allow the use of his name in drafts of this sort?

In the event the answer is that such use of an attorney's name is proper, would it also be proper for an attorney to furnish similar drafts directly to his clients with his name printed at the top in place of the name of the mercantile agency and also with his name printed at the bottom under Instructions to Bank?

ANSWER No. 131.

The committee is not advised by the question whether the charge of the mercantile agencies to the attorneys for representation is a fixed charge or one dependent upon the results to the attorneys. If the latter, the charge would fall within the committee's disapproval in answer to Question 47 IX (a). Nor is the committee advised whether the agency guarantees the services of the attorney. If so, it falls within the condemnation of Answer No. 47 II (c). Nor is the committee advised of the meaning of the inquirer when he says: "If the draft is not paid it is turned over to the attorney by the bank, and thus becomes a claim for collection to be handled in the *usual way*." These uncertainties in the question do not, however, preclude the committee from assuming that the inquirer intended to direct his inquiry specially to the practice indicated by the substantial form of the draft, and it answers the question on this assumption. In the opinion of the committee, it is not proper for an attorney to allow the use of his name in drafts of this sort. Such use of the attorney's name is in the opinion of the committee adopted as a device to make the payment of the draft more certain by acquainting the drawee with the name of the attorney, and thus using his name as a method of inducement or coercion without his employment and without the establishment of the relation of attorney and client between the lawyer and the drawer of the draft. (See also cognate Answer No. 102.)

The committee does not wish to be understood as intimating an opinion that there is any impropriety in the drawer of a draft instructing a bank in case of its non-payment to turn it over to his named attorney. It is the use of the attorney's name and official style upon the draft, or in connection therewith, as presented to the drawee, which the committee disapproves; and it also disapproves the furnishing of similar drafts by the attorney to his client, not only for the reason already stated, but because it seems to the committee to partake of the nature of solicitation of employment for, and improper advertisement of, the lawyer, to distribute such drafts to his clients for their use.

QUESTION No. 132.

Divorce; Relation with Third Person—Compensation of husband for furnishing evidence of his infidelity.—A (a white girl) institutes suit for an annulment of marriage against B (colored man). Complaint is dismissed for want of proof. Several years later A, who is anxious to secure a divorce from B, learns that B has committed adultery, but is unable to procure the necessary legal evidence to establish that fact. A interviews B, who admits that he he has been guilty of committing adultery, and is willing to advise A how she can obtain the necessary legal evidence if she will pay him a sum of money for so doing.

Assuming that the facts as stated are true, would the attorney for A be justified in making such arrangements with B?

ANSWERS No. 132.

It is the opinion of the committee that, however desirable a dissolution of the marriage bond may be in the case submitted, there is no justification either for A making any payment to B to procure evidence of B's guilt, or for A's

attorney advising or in any way consenting to such an arrangement.

QUESTION No. 133.

Judge—Engaging in business of selling securities; organizing, promoting, financing corporation.—In the opinion of the committee is it improper for the judge of a court of general jurisdiction to engage or assist in the business of selling or offering for sale corporate stocks, bonds or other securities, or to permit his name to be used for such purpose; or to engage in the organization, promotion or financing of a corporation?

ANSWER No. 133.

In the opinion of the committee, the practices tend to detract from public confidence in the judicial office, and should be disapproved.

BOOK REVIEW.

ALLEN'S BUSINESS LAW FOR ENGINEERS.

Much in the way of criticism might be indulged as to the work with the above title by Mr. C. Frank Allen, member American Society of Civil Engineers and member of Massachusetts bar. It stands as unique in the fact, that it lays down many propositions in law for the guidance of others and yet cites not a single authority in decision or in a standard text book in their support. It is to be said, however, that the propositions generally appear sound and good memoranda of what engineers should keep in mind when they are engaged in their work. His caution, that the book should rather lead them to seek proper advice in doubt, than to believe they know it all is one of the most salutary things said in the book.

As a compendium of fundamental principles frequently occurring to the mind and as to its forms in contract letting the book fills a useful place in legal writing. The modesty of one writing about a science in which he is not versed is not departed from unduly.

The book is bound in law buckram, in good print with particular parts in leaded type to attract attention, is well indexed and issues from McGraw-Hill Book Company, Inc., New York. and Hill Publishing Co., Ltd., London, 1917.

HUMOR OF THE LAW.

"He's suing the company that constructed his artificial limbs."

"On what grounds?"

"Non-support."—Buffalo Express.

"Did you notice any suspicious characters in that locality?" queried the court.

"Sure, yer honor," returned the newly appointed officer. "I saw but the one man, an' I asked him what he was doing there at that time o' night. Sez he, 'I have no business here just now, but I expect to open a jewelry store in this vicinity later on.' At that I sez, 'I wish you success, sor.'"

"Yes," said the magistrate, plainly disgusted. "He did open a jewelry store in the vicinity later on and stole a tray of rings and nine gold watches."

"Well, begorra," answered the policeman, after a reflective pause, "the man may have been a thafe, but he was no liar."—Chicago City (Ind.) News.

They were discussing at a dinner the voting frauds at a recent election and one of the guests told this story of a repeater:

He was an ignorant fellow, this repeater, wearing a stolid, sullen look. Upon being arrested, he asked what crime lay at his door.

"You are charged," said the policeman, "with having voted twice."

"Charged, am I?" muttered the prisoner. "That's strange. I expected to be paid for it."—St. Louis Republic.

There lives in a small town in Virginia a darky known to everyone of its inhabitants by the name of Chris. He is of medium size and is perhaps about thirty-three years of age, but might pass for twenty. His duties are various. He is janitor for two of the banks and several stores, messenger for the post-office for the sending of special delivery letters, has a monopoly as a distributer of newspapers, and at the same time conducts an itinerant shoe-shining business. He is shrewd and witty to a degree, and is allowed many liberties.

Not long since he approached the judge of the circuit court, a fine old gentleman of the elder school, and gravely presented him with a calendar.

"Jedge," he says, "I'se giving you twelve months, but I hope you ain't gwine return the compliment."—New York Evening Post.

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co. St. Paul, Minn

1. **Adverse Possession** — Permissive Occupancy.—Telegraph company, whose occupancy of railroad right of way was permissive, and not adverse, or with notice of claim of right, held to have acquired no prescriptive right.—Western Union Telegraph Co. v. Atlanta & W. P. R. Co., U. S. D. C., 243 Fed. 685.

2. **Attachment—Priority of Lien.**—Liens of materialmen, who had not complied with lien law, but who had adjudicated claims in attachment proceedings, held superior to claims of general creditors of religious society.—Hyde Park Supply Co. v. Peck-Williamson Heating & Ventilating Co., Ky., 197 S. W. 391.

3. **Attorney and Client**—Disbarment.—While an attorney is not bound to take legal business or to continue to act for his client, in withdrawing he should give opportunity to his client to procure other counsel; and where he settles with the adverse party, surrenders the notes sued on, and dismisses the suit, without consent of his client, he will be disbarred.—People v. Sullivan, Ill., 117 N. E. 134.

4. **Bankruptcy**—Assignment.—Where a bankrupt who was insolvent assigned accounts receivable to defendant, who was charged with knowledge that it was receiving a preference, such transfer, as it in fact preferred defendant and was made within four months of bankruptcy, is subject to attack as a preference.—McGill v. Commercial Credit Co., U. S. D. C., 243 Fed. 637.

5.——Consignor and Consignee.—As between consignor and consignee, goods which could be identified, and as to which title had not passed, held the property of the consignor, and the creditors and trustee in bankruptcy of the consignee had no better title than the consignee.—Taylor v. Fram, U. S. D. C., 243 Fed. 733.

6.——Discharge.—Where bankrupt's counsel delayed more than one year in filing his petition for discharge, believing proceedings in state court should first be terminated, discharge may be allowed under statute granting period of grace where impossible for bankrupt to sooner file his petition.—In re Swain, U. S. D. C., 243 Fed. 781.

7.——Estoppel.—Where defendant in plenary suit in equity filed with the referee in bankruptcy seasonably objected to referee's jurisdiction, he did not, by subsequently filing an answer to the merits, assent to the referee's jurisdiction.—In re Weidhorn, U. S. D. C., 243 Fed. 756.

8.——Insolvency.—Unlike common law, one is solvent under Bankruptcy Act when fair value of his possession exceeds amount of debts, though he may not be able to discharge them when due in lawful money.—McGill v. Commercial Credit Co., U. S. D. C., 243 Fed. 637.

9.——Lien by Attachment.—A lien obtained by attachment served more than four months before the filing of bankruptcy petition, although judgment was not rendered until such time, is valid, despite Bankr. Act, § 67f, where valid at the date of filing.—Yumet & Co. v. Delgado, U. S. D. C., 243 Fed. 519.

10.——Preference. — Mortgages executed by stockholders of a corporation to secure corporate indebtedness held preferences.—In re Hawkins, U. S. D. C., 243 Fed. 792.

11.——Priority.—Where representative of some of bankrupt's large creditors went into control of the business, held, that landlord had right of priority against goods levied on under distress warrant, and accounts for such goods sold, but not against the general fund, because of the commingling of assets.—In re Cole Jewelry Co., U. S. D. C., 243 Fed. 790.

12.——Set-Off.—Under Bankr. Act, §§ 14c, 17, 68a, 68b, notes held not available as set-off in favor of bankrupt, where third parties to whom they had been negotiated had proved them against the claimant in bankruptcy and participated in a composition settlement.—In re American Paper Co., U. S. D. C., 243 Fed. 753.

13.——Vacating Orders.—Where examination of bankrupt, had under Bankr. Act, § 21a, disclosed that he had probably made false statement, held, that order appointing receiver would not be vacated, on application of assignee for benefit of creditors selected by bankrupt prior to bankruptcy.—In re Resnek, U. S. D. C., 243 Fed. 417.

14. **Banks and Banking**—Mingling Funds.—Doctrine that trustee who mingles his own with trust funds and draws from mass will be presumed to draw from his own rather than trust funds has no application in case of bank fraudulently inducing one to subscribe for its stock and receiving payment.—People v. California Safe Deposit & Trust Co., Cal., 167 Pac. 388.

15.——Ratification.—Where cashier of bank after maturity indorsed note in blank and transferred it to plaintiff, who paid consideration,

bank's acceptance and appropriation of consideration amounts to ratification of cashier's act, though transfer was unauthorized.—Ohio Valley Banking & Trust Co. v. Great Southern Fire Ins. Co., Ky., 197 S. W. 399.

16. **Bills and Notes**—Indorsement.—A note payable to one or order cannot be transferred, so as to cut off the defense of the makers, except by indorsement of the payee.—Phelps v. Womack, Okla., 167 Pac. 478.

17.——Transfer After Maturity.—Negotiable Instrument Act, § 47, providing for negotiation and transmission of title after maturity, does not relieve instrument so transferred from defense in suit by transferee which maker or prior indorsers might have had.—Ohio Valley Banking & Trust Co. v. Great Southern Fire Ins. Co., Ky., 197 S. W. 399.

18. **Boundaries** — Estoppel. — Where parties merely claimed up to line specified in deed, wherever that line might be, held, that there was no estoppel.—Stratton v. Syck, Ky., 197 S. W. 389.

19. **Carrier of Passengers**—Assistance of Passenger.—In action by crippled passenger for injuries in alighting from train, where he requested no assistance and was attempting to alight in company with another, held that, under evidence, charges that carrier's agents were not bound to assist where they did not know his condition and were not informed, etc., were not improper.—Graham v. Norfolk-Southern R. Co., N. C., 93 S. E. 428.

20.——Limitation on Baggage.—Stipulations in baggage checks and recitals in carrier's schedules, limiting the value of baggage to be checked for free transportation on a whole passenger ticket to $100, held not to limit passenger's right to recover, where jury found that carrier wrongfully appropriated to its own use property valued at $182.50, which passenger had instructed to it for carriage.—Goldstein v. Northern Pac. Ry. Co., N. D., 164 N. W. 143.

21. **Certiorari**—Appeal and Error.—A judgment of foreclosure will not be reviewed at instance of one holding under junior mortgage recorded before notice of lis pendens, who was named as party to action without being summoned, and was dismissed from it, since his interest is not affected thereby.—Fuller & Todd Realty Co. v. Superior Court in and for Alameda County, Cal., 167 Pac. 377.

22. **Champerty and Maintenance**—Conveyance of Mineral Rights.—Where mineral rights in land were preserved a conveyance thereof is not champertous because another was in possession of surface of land and using it for tillage.—Barker v. Campbell-Ratcliff Land Co., Okla., 167 Pac. 468.

23. **Chattel Mortgages**—Offspring.—Mortgage on cattle and all increase and accretions held to cover, not only the offspring of the mortgaged cattle, but additions to the herd by acquisition.—Stockyards Loan Co. v. Nichols, C. C. A., 243 Fed. 511.

24. **Commerce**—Employes. — Employe, operating pumping station furnishing water to locomotives engaged in interstate and intrastate commerce, held within the federal Employer's Liability Act.—Roush v. Baltimore & O. R. Co., U. S. D. C., 243 Fed. 712.

25.——Foreign Corporation.—Foreign corporation, contracting to sell and install turbine pumps, held doing business in the state, and not engaged in interstate commerce, while installing such pumps.—Beach v. Kerr Turbine Co., U. S. D. C., 243 Fed. 706.

26. **Conspiracy**—Evidence.—That stockholders and officers of mining company, who had acquired title to mines which company was attempting to purchase, entered into reorganization plan with creditors at time when company was about to become bankrupt, does not establish conspiracy to ruin company.—Munro v. Smith, U. S. D. C., 243 Fed. 654.

27.——Evidence.—As privilege of attorney which exempts him from prosecution for anything he does or says in prosecuting suit in judicial tribunal, does not exempt him from prosecution for conspiracy, in which prosecution of suit was but one step, in prosecution for the conspiracy, files, papers, and transcript of testimony of witnesses, who testified on trial of such suit, were competent.—People v. Donahoe, Ill., 117 N. E. 105.

28. **Constitutional Law**—Race Segregation.—Race segregation ordinance of Atlanta prohibiting colored persons from occupying residences in block where greater number of houses are occupied as residences by white people, and vice versa, and excepting residences acquired before ordinances does not violate Constitution, Bill of Rights, §1, par. 2, providing for impartial protection of persons and property.—Harden v. City of Atlanta, Ga., 93 S. E. 401.

29. **Contempt**—Misbehavior.—Conduct of attorneys in criminal case in visiting with jurors, drinking with one of them, and promising another introductions requested by him, held misbehavior obstructing the administration of justice, and requiring that they be fined.—In re Kelly, U. S. D. C., 243 Fed. 696.

30. **Contracts**—Rescission.—Where a contract permits one party to rescind and prescribes the method or make rescission conditional on certain acts, such party cannot rescind in any other way, or without complying with conditions.—Wright v. Bristol Patent Leather Co., Pa., 101 Atl. 844.

31. **Corporations** — Contract of Guaranty. — Corporation has no power to make contract of guaranty or suretyship unless expressly authorized by its charter or by statute, except where power to do so is implied from express powers as necessary to furtherance of its legitimate business.—Pollitz v. Public Utilities Commission of Ohio, Ohio, 117 N. E. 149.

32.——Directors as Trustees. — Director of trustee corporation could not assert that it was not acting as trustee for creditors of another corporation, where his object was to acquire a benefit from his dealings with trust property.—H. B. Cartwright & Bro. v. United States Bank & Trust Co., N. M., 167 Pac. 436.

33.——Preference.—A transfer by insolvent New York corporation which effected a preference cannot be sustained under New York Stock Corporation Law, § 66, though the creditor receiving the preference had no knowledge or no-

tice of the corporation's insolvency.—McGill v. Commercial Credit Co., N. S. D. C., 243 Fed. 637.

34.——Secret Profits.—That stockholders of mining company, who bought in property which company had contracted to purchase, kept their purchase secret, mining company failing to pay price, held to afford no ground for relief under constructive theory of secret profits.—Munro v. Smith, U. S. D. C., 243 Fed. 654.

35. **Courts**—Jurisdiction by Consent.—Jurisdiction cannot be conferred by consent or failure of parties to raise question in trial court.—Spencer v. Patey, U. S. C. C. A., 243 Fed. 555.

36. **Damages**—Evidence.—Recovery for failure to transmit fire alarm to plaintiff's engine room held not defeated on theory that it was not within the contemplation of the parties that plaintiff would rely upon notice from defendant to increase its water pressure.—Missouri Dist. Telegraph Co., U. S. C. C. A., v. Morris & Co., 243 Fed. 481.

37.——Mitigation of.—Where defendant backed water on plaintiffs' land by means of a dam, plaintiffs were under no legal duty to drain the lands to avert or mitigate the damages.—Borden v. Carolina Power & Light Co., N. C., 93 S. E. 442.

38.——Pleading and Practice.—As a general rule of pleading, it is not necessary to claim exemplary damages by name; it being sufficient if the facts alleged and the proofs be such as to warrant their assessment.—Joseph v. Naylor, Pa., 101 Atl. 846.

39. **Deeds**—Confidential Relation.—Son standing in confidential relation, to aged mother who executed deed of practically her entire property to him during her last illness had the burden of showing the absence of undue influence and the payment of sufficient consideration.—Mann v. Prouty, N. D., 164 N. W. 139.

40. **Divorce**—Collateral Attack.—Under Laws 1901, c. 70, providing that a judgment of divorce shall restore parties to state of unmarried persons, except that neither shall marry within three months, marriage contracted by divorced person less than three months after rendition of decree is not void, and may not be collaterally attacked on probate of such person's estate.—Woodward v. Blake, N. D., 164 N. W. 156.

41.——Condonation.—"Condonation," conditional forgiveness of matrimonial offense constituting cause for divorce, is defense only in ordinary divorce action, and statutory provisions as to such defense have no part in proceeding for annulment of marriage for fraud.—Millar v. Millar, Cal., 167 Pac. 394.

42. **Drains**—Withholding Payments.—Under contract for construction of drainage ditch, held, where contractor was insolvent, and abandoned contract, and liens had been filed for materials and labor, drainage district was justified in withholding payments.—Wykoff v. Stewart, Iowa, 164 N. W. 122.

43. **Easement**—Estoppel.—That grantee of right of way over land of another for 20 years used it without constructing bridge over stream in line of his easement, using a ford during that time, does not thereafter preclude him from erecting bridge.—Hammond v. Hammond, Pa., 101 Atl. 855.

44. **Eminent Domain**—Injunction.—The fact that property owner will be damaged by peculiar method of constructing a municipal bridge will not justify injunction against construction until damage is paid.—S. D. Childs & Co. v. City of Chicago, Ill., 117 N. E. 115.

45.——View of Premises.—A judge trying a case involving street widening damage and benefit assessments without a jury may view premises and use knowledge so acquired to same extent as a jury might do.—City of Chicago v. Lord, Ill., 117 N. E. 52.

46. **Equity**—Fraud.—Where bill of trustee of bankrupt mining company, charging actual fraud on part of defendants, alleged conspiracy to wreck company, etc., such bill must be dismissed, where the fraud was not established.—Munro v. Smith, U. S. D. C., 243 Fed. 654.

47. **Escrows**—Filing for Record.—Where holder of a bond for title deposited it with bank as security and the bank surrendered it to maker, receiving a deed conditioned to be void on payment of purchase money and also an escrow deed conveying land to obligee, held that escrow deed having been filed for record operated to convey full title for general purposes.—Ray v. Atlanta Trust & Banking Co., Ga., 93 S. E. 418.

48. **Estoppel**—Riparian Owner.—In action by Attorney General to regain possession of land added to that of riparian owner by accretion, through the erection of piers on adjacent land, the fact that the riparian owner was a member of the city council which constructed the pier did not deprive him of his rights as an ordinary riparian owner.—Brundage v. Knox, Ill., 117 N. E. 123.

49. **Chancery**—Executors and Administrators.—Where executors and trustees of residue of estate were not authorized to borrow money for estate and to pledge certain stock as security therefor, they could not do so under an unauthorized decree of the chancery court.—Luckett v. Brickell, Miss., 76 So. 502.

50. **Evidence** — False Pretenses. — Evidence that payee of note which defendant procured to be delivered to him, secured by mortgage on real estate to which mortgagor had no title, without authority from or knowledge of defendant induced another by fraudulent representations to buy it, retaining the proceeds, is insufficient to sustain conviction for obtaining money by false pretenses.—State v. Keep, Ore., 166 Pac. 936.

51. **Food**—Trade Name.—Where complainant's trade-name "Creamo Oleomargarine" was registered after enactment of Meat Inspection Act June 30, 1906, and was approved by Agricultural Department, such approval could not subsequently be withdrawn and complainant required to abandon name because cream was not always used in manufacture of its product.—Brougham v. Blanton Mfg. Co., C. C. A., 243 Fed. 503.

52. **Husband and Wife**—Alienation of Affections.—The fact that husband and wife may not be living together harmoniously when the wife's affections are alienated does not affect the husband's right to recover therefor, although the circumstance may be considered in mitigation of damages.—Joseph v. Naylor, Pa., 101 Atl. 846.

53.——Separate Estate.—Where in 1859, a married woman received a gift of money, donor intending that it should be for her separate use, and after receiving it woman delivered money to her husband, who by investment in other property mingled it with his individual estate, such property became separate estate for use of wife; husband holding as implied trust.—Garner v. Lankford, Ga., 93 S. E. 411.

54. **Injunction**—Restrictions as to Property.—Suit in equity to restrain conveyance of land to third person without incorporating into conveyance certain restrictions as to use of property was defective, where such third person was not made a party.—Caveny v. Curtis, Pa., 101 Atl. 853.

55.——Violation of.—Where officers of a fraternal order were prohibited from disposing of funds, their action in issuing and cashing warrants not expressly prohibited but accomplishing the same result violated the injunction.—Court Rose No. 12, Foresters of America, of Spring Valley, v. Corna, Ill., 117 N. E. 144.

56. **Insurance**—Accident. — Though a policy insuring motorist against accident occurring when car was being driven by a person under 16 years of age, insurer is liable for an accident occurring when insured had taken control of car from his son who was under that age.—Williams v. Nelson, Mass., 117 N. E. 189.

57.——Agent.—Where contract between life insurance company and agent expressly provided that it might be terminated by either party at will, company's entry into a consolidation with another was not a breach, authorizing agent to recover, on theory that company was prevented thereby from carrying out its agreement.—Wilkinson v. Inter-Southern Life Ins. Co., Ga., 93 S. E. 406.

58.——Rescission.—Plaintiff cannot have policy on his life rescinded and premiums returned on the ground of no meeting of minds, because he mistakenly understood it would be payable to him if he lived to the end of endowment period; it being according to his application, and he not having examined it for years.—Hayes v. Penn Mut. Life Ins. Co., Mass., 117 N. E. 191.

59.——Supplemental Contract. — Contract of life insurance as expressed in policy issued may be supplemented by subsequent contract between parties expressed in note given by insured to insurer for premium and providing for termination of all rights on nonpayment of note.—State Life Ins. Co. of Indianapolis, Ind., v. Tyler, Ga., 93 S. E. 415.

60.——Valid Condition.—A condition in a policy of casualty insurance that no action should lie against insurer to recover for any loss unless for loss or expense actually sustained and paid in money by the insured in satisfaction of final judgment is valid unless prohibited by law.—Lorando v. Gethro, Mass., 117 N. E. 185.

61. **Intoxicating Liquors** — Criminal Law. — Where defendant, concealing that it contained spirituous liquors in excess of amount allowed by law, delivered to railroad company trunk for transportation into Georgia, requested charge that, before jury could convict, it must be shown that trunk was in actual possession of defendant, is properly refused, as jury might have been led to believe that possession by company while trunk was being transported was not sufficient to establish defendant's guilt.—Hendry v. State, Ga., 93 S. E. 413.

62.——Unlawful Shipment.—Laws 1915, c. 2, § 18, prohibiting the shipment of intoxicating liquors without a license and without proper label "within" the state, prohibits the shipment without compliance therewith "into" the state.—State v. Warburton, Wash., 166 Pac. 615.

63. **Libel and Slander**—Libel per se.—A statement by the consulting engineer of a gas company that president should be asked to resign, and that fake meters had been used, and there was systematic stealing from the company, did not charge the president with dishonesty.—Ferrier v. De Frese, U. S. D. C., 243 Fed. 765.

64. **Malicious Prosecution**—Punitive Damages.—In malicious prosecution, where question of punitive damages was submitted, evidence showing that defendant believed charge true held competent to rebut inference of actual malice.—Gray v. Cartwright, N. C., 93 S. E. 432.

65. **Mandamus**—Wrongful Delivery by Officer.—The sheriff having wrongfully redelivered the property to defendant in claim and delivery, its possession is that of the sheriff as his agent, as regards right, under Code Civ. Proc. § 1085, to mandamus to require delivery to plaintiff in such action.—Bailey v. Security Trust Co., Cal., 167 Pac. 409.

66.——Public Service Company. — Mandamus held a proper remedy for failure and refusal of street car company to operate cars on tracks maintained under franchises.—State v. Puget Sound Traction, Light & Power Co., U. S. D. C., 243 Fed. 748.

67. **Master and Servant**—Course of Employment.—Injury to employe from switch engine on premises of employer, while going to dinner by a direct and ordinary route, held to arise out of and in the course of his employment, within Workmen's Compensation Law.—Bylow v. St. Regis Paper Co., N. Y., 166 N. Y. S. 874.

68.——Hazardous Employment.—A chauffeur's injury received while repairing master's touring car, generally used for recreation, did not come within Workmen's Compensation Act, as injury received in "hazardous employment."—Wincheski v. Morris, N. Y., 166 N. Y. S. 873.

69.——Illegal Employment. — That claimant boy was employed in violation of Labor Law, § 93, furnished no defense to payment of compensation by either employer or insurance carrier, although insurance contract limited liability to cases where employes were legally employed.—Ide v. Faul & Timmins, N. Y., 166 A. Y. S. 858.

70.——Independent Contractor. — Doctrine of master's nonliability for acts of independent contractor does not protect master, when injury is caused by unguarded machinery furnished independent contractor.—Evans v. Dare Lumber Co., N. C., 93 S. E. 430.

71.——Respondeat Superior. — Where a servant, with authority to hire incidental help necessary to the operation of an oil lease, asked an odd-job man to help him, and in doing the work both were killed, the employer was the employer of the odd job man.—Tillburg v. McCarthy & Townsnd, N. Y., 166 N. Y. S. 878.

72.——Workmen's Compensation Law.—Action for death of employe in 1915, killed by explosion of gas engine flywheel used in operating oil and gas lease, could not be sustained under the then Workmen's Compensation Law; operation of such wells not being classed as hazardous.—Tillburg v. McCarthy & Townsend, N. Y., 166 N. Y. S. 878.

73. **Mortgage**—Bankruptcy.—Holders of mortgage, who procured sale and bid in the property, subject to water rents, which accrued while the premises were owned by a corporation, which did not assume the mortgage, held to have no claim against the corporation or its estate in bankruptcy, where they had not paid the water rents or obtained an assignment from the city.—In re Amsdell-Kirschner Brewing Co., U. S. D. C., 243 Fed. 783.

74. **Negligence**—Respondeat Superior.—Comp. Laws 1913, §§ 2797, 2798, do not render a landowner liable for fire set on his premises by another, unless such other was acting under his direction, or was in his employ and acting in the course of his employment.—Sorenson v. Switzer, N. D., 164 N. W. 136.

75. **Officers**—Official Bond.—A public officer and his sureties are liable upon his official bond for money received by him by virtue of his office as an insurer, and are not relieved from liability by the loss of the money without the officer's negligence or default.—People v. McGrath, Ill., 117 N. E. 74.

76. **Payment**—Bankruptcy.—Holder of note secured by bonds of the debtor, which sold the bonds and purchased them itself, and subsequently received payment of the bonds in full, held to have no claim on the note provable in bankruptcy.—In re Alburtis Silk Ribbon Mills, U. S. D. C., 243 Fed. 777.

77.——Official Compensation.—Where clerk, contending that sums collected by him as compensation for acting as referee belonged to him individually, and stating that he would expect return if it should be so found, paid amount into county treasury, held, that recovery of payment could not be defeated on ground that it was made under mistake of law.—Burlingame v. Hardin County, Iowa, 164 N. W. 115.

78. **Party Walls**—Underpinning.—Where adjoining owner underpinned party wall in erecting building wholly supported by its own wall, the attachment of girders to party wall did not make it and underpinning wall as a whole a party wall.—Hayes v. Arcade Real Estate Co., Pa., 101 Atl. 850.

79. **Pledges**—Reimbursement.—Where funds of defendant bank which held as security bond for title to land were applied to discharge of a valid and subsisting lien on the property in question, plaintiff, before she can recover in equity held bound to reimburse defendant.—Ray v. Atlanta Trust & Banking Co., Ga., 93 S. E. 418.

80. **Principal and Surety.**—Application of Payments.—Where owner of building sued contractor's surety on one particular claim, he is not bound to apply to such claim sums remaining from contract price in preference to other claims equally meritorious.—Seattle Dock Co. v. Pacific Surety Co., Ore., 167 Pac. 510.

81. **Process**—Return of Officer.—While a sheriff's return on process is not conclusive, and does not, even between the parties and privies to the action, import absolute verity, yet it is prima facie correct, and proof necessary to overturn it must be clear and unequivocal.—Lake Drainage Com'rs v. Spencer, N. C., 93 S. E. 435.

82. **Railroads**—Safety Appliance Act.—The "nearest available" point for repairs, to which Safety Appliance Act allows a defective car to be hauled without penalty, does not depend on mere distance, and is a matter of business judgment, on which good-faith decision of those in charge has weight.—United States v. Boston & M. R. R., U. S. D. C., 243 Fed. 795.

83.——Trespasser.—Insured walking along railroad right of way where persons were accustomed to walk, railroad not having forbidden such travel, is not trespasser as to his insurer.—Helm v. Illinois Commercial Men's Ass'n, Ill., 117 N. E. 63.

84. **Replevin**—Subrogation.—In replevin by administrator c. t. a. for stock certificates pledged by executor to defendant to secure a loan applied to uses of estate, held, that equitable defense of subrogation could not be set up.—Luckett v. Brickell, Miss., 76 So. 502.

85. **Sales**—Waiver.—Where verbal sales contract was confirmed by letters reciting sale of butter due to arrive in S. about a specified date, and that shipment would be made promptly thereafter, and defendant did not object to delay in receiving butter until after delivery plaintiff seller performed by promptly forwarding butter which arrived in S. eight days late on account of storms.—Bowman & Bull Co. v. Linn, Ill., 117 N. E. 61.

86. **Seamen**—Damages.—The measure of recovery by a seaman, injured in the service of the ship, is his wages to the end of the voyage and the expense of his maintenance and cure, whether he sues in a court of admiralty or of common law, notwithstanding Seamen's Act, § 20.—Chelentis v. Luckenbach S. S. Co., U. S. D. C., 243 Fed. 536.

87.——Maintenance and Care.—Wireless telegraph operator, hired and paid by telegraph company and furnished to vessel with apparatus, held member of the crew, and as seaman entitled to maintenance and care when he became ill.—The Buena Ventura, U. S. D. C., 243 Fed. 797.

88. **Trust**—Dry Trust.—Provision of will that, if testator's daughter died before her son attained 25, executors should hold realty devised to daughter in trust for her son, etc., held to be mere dry trust, subject to statute of uses, and on death of daughter to pass fee simple to son.—Alford v. Bennett, Ill., 117 N. E. 89.

89.——Good Faith.—Where bill did not allege facts from which the fraud of a testamentary trustee joining in a petition to sell realty to pay debts could be inferred, his good faith will be presumed.—Brickell v. Lightcap, Miss., 76 So. 489.

90. **Turnpikes and Toll Roads**—Abandonment.—Transfer of turnpike road to state held not an abandonment, entitling grantor and his heirs and assigns to retake toll house conveyed to turnpike company, which was to revert in case of abandonment.—Commonwealth v. Koontz, Pa., 101 Atl. 863.

91. **Use and Occupation**—Municipal Corporation.—Municipal corporation authorized to engage in a public work such as furnishing water, etc., to its inhabitants may dispose of the surplus beyond their needs arising in prudent operation of the work to private individuals.—City of Los Angeles, Cal., v. Lewis, 167 Pac. 390.

92. **Vendor and Purchaser**—Antecedent Negotiations.—The general rule that preliminary agreements relating to the sale of land become merged in deed does not apply to independent covenants or provisions in an agreement of sale not intended to be incorporated in deed.—Caveny v. Curtis, Pa., 101 Atl. 853.

93.——Marketable Title.—Title is not unmerchantable where no question of fact is involved, and it is good as matter of law.—Buchan v. German-American Land Co., Iowa, 164 N. W. 119.

94. **War—Alien.**—On the declaration of a state of war between Germany and the United States, a pending suit for infringement by partners, who then became alien enemies, some resident and some nonresident, will be stayed for the duration of the war.—Specidel v. N. Barstow Co., U. S. D. C., 243 Fed. 621.

95. **Waters and Water Courses**—Extraordinary Flood.—Defendant held not liable for injuries caused by flooding of plaintiff's land in extraordinary flood, though waters were impounded by bridge constructed by defendant to facilitate his right of way over plaintiff's property; bridge allowing waters even of ordinary flood to escape.—Hammond v. Hammond, Pa., 101 Atl. 855.

96. **Wills—Collateral Contract.**—That written contract between devisees providing for the management of their interests in two corporations had been filed in chancery suit brought to settle the estate, and approved by court, did not give it additional force.—Haldeman v. Haldeman, Ky., 197 S. W. 376.

97.——Lend and Give.—The word "lend," in a will, will pass the property to which it applies in the same manner as "give" or "devise," unless it is manifest that the testator intended otherwise.—Cohoon v. Upton, N. C., 93 S. E. 446.

98.——Nuncupative Will.—Where, for at least 36 hours after making of alleged nuncupative will, testatrix could have dictated will to scrivener, had one been secured, as might readily have been done, such will cannot be sustained, though testatrix would have had to sign by mark, or authorize another to sign her name.—In re Shover's Estate, Pa., 101 Atl. 862.

99.——Survivorship.—Where testator devised land to his son, to be delivered to him on his arrival at majority in fee simple, and after his death to his children, and issue of such children as might be dead, held, that, on death of son without children or issue whole of land reverted to testator's estate.—Kemp v. Lewis, Ga., 93 S. E. 404.

100.——Undue Influence.—Where testator, who had no near relatives, his next of kin being a nephew, devised and bequeathed bulk of his estate to a man and wife, fact that testator entertained meretricious relations with the wife does not raise presumption that will was result of her undue influence, but such influence must be proven as any other independent fact.—In re Watmough's Estate, Pa., 101 Atl. 857.